

**Afep (Association of Large French companies) submission:**

**Written comments on Section 301 investigation regarding the potential trade distortive impact on the French Digital Services Tax (USTR-2019-0009)**

Large French companies react to the publication by the USTR of the **notice on the initiation of investigation of French Digital Services Tax (Federal register, July 16, 2019)**.

**Priority to G20/OECD negotiating framework and, in any event, to a WTO compliant procedure**

- Large French companies first invite USTR to take in account the international context for the introduction of the French digital services tax (DST). French DST was unilaterally proposed by French government and adopted by French Parliament in July 2019 as a temporary measure **until G20/OECD negotiations over the handling of digital economy taxation under G20 countries' tax system have been completed.**
- After the adoption of the DST, **French government clarified** that, in case **G20/OECD discussions result in a satisfactory outcome in terms of new rules for determining the appropriate nexus for corporate taxes, and, in particular, for the taxation of digital economy companies, it will have the DST repealed subsequently.**
- Therefore, large French companies strongly encourage the USTR to **consider G20/OECD negotiating process as a key element for the sake of its investigation on French DST under Section 301 procedure** and, notably, to **halt any concrete determination on trade distortive effects and potential countervailing measures if there are clear indication that these negotiations are about to be successfully concluded.** In this regard, a political agreement in the context of the G7 Summit in Biarritz at the end of August 2019 would pave the way for an overall G20 agreement by the end of 2020, **which coincides with the maximum duration of the amicable consultation period under Section 301 procedure.**
- Still based on Section 301 procedure, large French companies also encourage the USTR to engage **consultations with the French government and/or the EU on a possible bilateral compromise on the taxation of digital activities before moving to further procedural steps.**
- Eventually, large French companies are of the view that the appreciation whether French DST is likely to constitute an obstacle to bilateral trade in services between the United States and France, possibly in breach of the EU obligations under GATS, **should be left to the WTO dispute settlement system which is design to deal with such trade litigations.** In the case the US are not ready to halt any action before the end of the G20/OECD negotiations or if bilateral negotiations with the French government/the EU do not succeed, **large French companies suggest the opening of a formal consultation under the WTO Dispute Settlement Mechanism (DMS) and that both Parties abide by the procedural steps deriving from the Dispute Settlement Understanding (DSU).**
- This would prevent the risk of a unilateral taxation of French imports with potential negative side effects for the French and the US economy (in the latter case via downstream sectors such as importers and retail or compensating measures imposed by the EU side).

Large French businesses recommend:

**(1) Postponing further consideration on the possible trade distortive effects of the French Digital Services Tax (DST) until the G20/OECD negotiations on new rules for the determination of the nexus for corporate tax have resulted in a satisfactory outcome;**

**or alternatively,**

**(2) Engaging bilateral consultations with the French government and the EU on a possible compromise on the taxation of digital activities within the 12-18-month period provided for under Section 301 procedure and, in any event,**

**(3) Observing GATS rules and WTO DSM proceedings that would imply, if none of the above can be achieved, the opening of a formal consultation on the GATS compliance of the French DST and postponing any determination on countervailing measures until the DSM panel/arbitrator has returned a determination on the potential breach of GATS disciplines and, thereafter, an evaluation of permissible compensation.**

#### **About AFEP**

Since 1982, Afep brings together large companies operating in France. The Association is based in Paris and Brussels. Afep aims to foster a business-friendly environment and to present the company members' vision to French public authorities, European institutions and international organisations. Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation is Afep's core priority. Afep has 120 members. More than 8.5 million people are employed by Afep companies and their annual combined turnover amounts to €3,000 billion.

Afep is involved in drafting cross-sectoral legislation, at French and European level, in the following areas: economy, taxation, company law and corporate governance, corporate finance and financial markets, competition, intellectual property and consumer affairs, labour law and social protection, environment and energy, corporate social responsibility and trade.

[www.afep.com](http://www.afep.com)

#### **Contact**

**Marc Poulain**, international trade negotiations director | [m.poulain@afep.com](mailto:m.poulain@afep.com) | +33 (0)1 43 59 85 34 / +32 (0)22275726